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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/823,895	04/13/2004	Michael A. Rothman	P19009	5656
46915 7590 07/10/2008 KONRAD RAYNES & VICTOR, LLP. ATTN: INT77 315 SOUTH BEVERLY DRIVE, SUITE 210 BEVERLY HILLS, CA 90212				
EXAMINER				
YU, JAE UN				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary**Application No.**

10/823,895

Applicant(s)

ROTHMAN ET AL.

Examiner

JAE U. YU

Art Unit

2185

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 March 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SI/02)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

The examiner acknowledges the applicant's submission of an amendment dated 3/27/2008. At this point claims 19 and 23 have been amended. Claims 32-34 are added. Thus, claims 1-34 are pending in the instant application.

Response to Amendment

The examiner directs the applicant's attention to the following new ground(s) of rejection below.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 23-31 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claim 23 recites "an article of manufacture in communication with storage", which the specification defines as "a transmission media, such as a network transmission line...infrared signals, etc" in paragraph 19. The transmission media is intangible and the claims are non-statutory.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1-2, 7-9, 10-11, 16-18, 19, 21, 23-24 and 29-31 are rejected under 35

U.S.C. 103(a) as being unpatentable over Lawrence et al. (US 6,253,300) in view of Andrew et al. (US 2004/0059863).

2. As per **independent claims 1, 10, 19 and 23**, Lawrence et al. disclose; "receiving an I/O request to update an object [**"File", Column 5, Lines 37-39**] in the storage [**"Storage Medium", Column 5, Line 42**]", "defragmenting the object in the storage [**Defragmenting the file in storage, Column 5, Lines 37-39**] so that blocks in storage including the object are contiguous [**"Stored in contiguous region of the storage medium", Column 5, Lines 41-42**] in response to receiving the I/O request to update the object, wherein the request to update the object causes the defragmentation operation [**Running a defragmentation program before the copy operation, Column 5, Lines 37-39**]", and "executing the I/O request to update the object in the storage [**Copying the files in storage, Column 5, Lines 37-39**]".

Lawrence et al. do not disclose expressly that the update operation is a write operation.

Andrew et al. disclose a shutdown operation that triggers a defragmentation in Figure 4, wherein a shutdown operation inherently comprises disk write operations.

Lawrence et al. and Andrew et al. are analogous art because they are from the same field of endeavor of storage device access control.

At the time of the invention it would have been obvious to combine Lawrence et al. with Andrew et al. by defragmenting a hard drive in response to a system shutdown request as taught by Andrew et al. in Figure 4.

The motivation for doing so would have been to optimize the system performance as expressly taught by Andrew et al. in abstract.

Therefore, it would have been obvious to combine Andrew et al. for the benefit of system performance improvement to obtain the invention as specified in claims 1, 10, 19 and 23.

3. **Claims 2, 11 and 24** disclose, “the I/O request is executed with respect to the object after defragmenting the object”. **Lawrence et al. disclose copying file (“I/O request to the object” from the claim) after running a defragmentation program in column 5, Lines 37-39.**

4. **Claims 7, 16 and 29** disclose, “determining whether the object is read-only, wherein the object is defragmented if the object is not read-only, wherein the I/O

request to update the object is executed without defragmenting the object in response to determining that the object is read-only". **Read-only means that the object is write-protected. Since defragmenting comprises the process of copying/deleting of an object to a different location, Lawrence et al. inherently defragment only "not write-protected" ("not read-only" from the claim) objects.**

5. **Claims 8-9, 17-18 and 30-31** disclose, "the operation of receiving the I/O requests, initiating the operation to defragment the object, and executing the I/O request of defragmenting the object in storage are performed by a storage controller managing I/O requests to the storage and a device driver for the storage providing an interface to the storage". **Lawrence et al. disclose the operation of defragmenting the object in storage in a computer system. Therefore, the computer system inherently includes the "storage controller" and the "device driver" from the claim.**

6. **Claim 21** discloses, "the storage controller and storage device are included in the same housing [Computer System]". **Lawrence et al. disclose defragmenting in a computer system that inherently includes the "storage controller" and the "storage device" from the claim.**

7. **Claims 3, 12, 20 and 25** are rejected under 35 U.S.C. 103(a) as being unpatentable over Lawrence et al. (US 6,253,300) in view of Andrew et al. (US

2004/0059863) as applied to claims 1, 10, 19 and 23 above and further in view of Brown, III et al. (US 6,038,636).

8. As per **claims 3, 12, 20 and 25**, Lawrence et al. and Andrew et al. disclose, "determining whether an amount of fragmentation of the object in the storage exceeds a fragmentation threshold [**Any amount of fragmentation higher than zero, Column 5, Lines 37-39**] in response to receiving the I/O request, wherein the object is defragmented [**Eliminating fragmentation on the file, Column 5, Lines 37-39**] if the amount of fragmentation exceeds the fragmentation threshold [**If fragmentation exists, Column 5, Lines 37-39**], and wherein the I/O request to update the object is executed without defragmenting the object in response to determining that the amount of fragmentation does not exceed the fragmentation threshold".

Lawrence et al. and Andrew et al. do not disclose expressly, "indicating an acceptable number of bytes stored in non-contiguous locations".

Brown, III et al. disclose, "determining whether the size field in the file header is equal to a certain predetermined code" (Column 10, Lines 1-5), wherein the size is represented as "bytes" (Column 7, Lines 45-46).

Lawrence et al., Andrew et al. and Brown, III et al. are analogous art because they are from the same filed of endeavor of defragmenting storage devices.

At the time of the invention it would have been obvious to a person of ordinary skill in the art to modify Lawrence et al. and Andrew et al. by defragmenting upon determining the size of the non-contiguous data sectors as taught by Brown, III et al. in column 10, at lines 1-5.

The motivation for doing so would have been to reclaim free spaces in memory device as expressly taught by Brown, III et al. in the abstract.

Therefore, it would have been obvious to combine Brown, III et al. with Lawrence et al. and Andrew et al. for the benefit of memory optimization to obtain the invention as specified in claims 3, 12, 20 and 25.

9. Claim 22 is rejected under 35 U.S.C. 103 (a) as being obvious over Lawrence et al. (US 6,253,300) in view of Andrew et al. (US 2004/0059863) as applied to claims 1, 10, 19 and 23 above and further in view of Karger et al. (US 5,339,449).

10. As per claim 22, Lawrence et al. and Andrew et al. disclose, "a processor [Computer System]".

Lawrence et al. and Andrew et al. do not disclose expressly, "a memory enabled to store the I/O request before the I/O request is received by the storage controller".

Karger et al. disclose the I/O request queue in column 20, at lines 47-50.

Lawrence et al., Andrew et al. and Karger et al. are analogous art because they are from the same field of endeavor of memory management.

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify Lawrence et al., Andrew et al. by including an I/O request queue as taught by Karger et al. in column 20, at lines 47-50.

The motivation for doing so would have been to process the I/O requests based on their priorities in the queue as expressly taught by Karger et al. in column 20-21, at Lines 67-5.

Therefore, it would have been obvious to combine Karger et al. with Lawrence et al. and Andrew et al. for the benefit of prioritized I/O process to obtain the invention as specified in claim 22.

11. Claims 4-5, 13-14 and 26-27 are rejected under 35 U.S.C. (a) as being obvious over Lawrence et al. (US 6,253,300) in view of Andrew et al. (US 2004/0059863) as applied to claims 1, 10, 19 and 23 above and further in view of Douglass et al. (US 2005/0108075).

12. As per claims 4-5, 13-14 and 26-27, Lawrence et al. and Andrew et al. disclose, "performing defragmentation in response to receiving the I/O request".

Lawrence et al. and Andrew et al. do not disclose expressly, "determining whether a user settable flag indicates to perform defragmentation, wherein the object is

defragmented if the flag indicates to perform defragmentation" and "executing the I/O request without performing defragmentation if the flag does not indicate to perform defragmentation".

Douglis et al. disclose deferring defragmentation if there is restriction of power usage ("flag" from the claim) in paragraph 32, wherein the "flag" is user settable since an user can alternate between restricted power source (battery) and unlimited power source (wall outlet).

Lawrence et al., Andrew et al. and Douglis et al. are analogous art because they are from the same filed of endeavor of defragmentation.

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify Lawrence et al. and Andrew et al. by including a flag that defers defragmentation in case of battery use as taught by Douglis et al. in paragraph 32.

The motivation for doing so would have been adaptive control of application power consumption in a mobile computer as expressly taught by Douglis et al. in paragraph 2.

Therefore, it would have been obvious to combine Douglis et al. with Lawrence et al. and Andrew et al. for the benefit of efficient power consumption to obtain the invention as specified in claims 4-5, 13-14 and 26-27.

13. Claims 6, 15 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lawrence et al. (US 6,253,300) in view of Andrew et al. (US 2004/0059863) as applied to claims 1, 10, 19 and 23 above and further in view of Ball et al. (US 2005/0162944).

14. As per claims 6, 15 and 28, Lawrence et al. and Andrew et al. disclose the method and the system recited in claims 1, 10 and 23 including the limitation, "the I/O request to update object is executed" and "the object is defragmented if the object is within one logical partition [the object within "a disk" being defragmented, Figure 7]".

Lawrence et al. and Andrew et al. do not disclose expressly not defragmenting the object in response to determining that the object is included in more than one logical partition.

Ball et al. disclose the object (Element 24) included in more than one logical partition (partitions a-d), wherein the active memory is not defragmented (Abstract).

Lawrence et al., Andrew et al. and Ball et al. are analogous art because they are from the same filed of endeavor of defragmenting storage devices.

At the time of the invention it would have been obvious to a person of ordinary skill in the art to modify Lawrence et al. and Andrew et al. by not defragmenting the active memory and defragmenting the redundant inactive memory instead as taught by Ball et al. in the abstract.

The motivation for doing so would have been to minimize the impact of defragmentation, thus, increasing the system performance as expressly taught by Ball et al. in paragraph 24.

Therefore, it would have been obvious to combine Ball et al. with Lawrence et al. and Andrew et al. for the benefit of mitigating the impact of defragmentation to obtain the invention as specified in claims 6, 15 and 28.

15. Claims 32-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lawrence et al. (US 6,253,300) in view of Andrew et al. (US 2004/0059863) as applied to claims 1, 10, 19 and 23 above, and further in view of Brown, III et al. (US 6,038,636) and Ball et al. (US 2005/0162944).

16. As per claims 32-34, the claims have a similar scope as claims 3, 6 and 7. Thus, claims 32-34 are rejected by the same reasons as claims 3, 6 and 7.

Arguments Regarding 35 USC § 101

Regarding claim 23, the amendment does not narrow the scope of the "computer readable medium", and the "computer readable medium" still comprises the

"transmission media" disclosed in paragraph 19 of the specification. Thus, the examiner does not change his position regarding the matter.

Conclusion

A. Claims Rejected in the Application

Claims 1-34 have received a second action on the merits and are subject of a second action non-final.

B. Direction of All Future Remarks

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jae Un Yu who is normally available from 9:00 A.M. to 5:30 P.M. Monday thru Friday and can be reached at the following telephone number: (571) 272-1133.

If attempts to reach the above noted examiner by telephone are unsuccessful, the Examiner's supervisor, Sanjiv Shah, can be reached at the following telephone number: (571) 272-4098.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business

Art Unit: 2185

Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jae U Yu/

Examiner, Art Unit 2185

7/4/2008

/Sanjiv Shah/

Supervisory Patent Examiner, Art Unit 2185